

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

United States of America,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	File No. 1:20-mj-358
	)	
Christopher Lewis Gillette,	)	
	)	
Defendant.	)	

PARTIAL TRANSCRIPT OF  
PRELIMINARY HEARING AND DETENTION HEARING

Taken at  
United States Courthouse  
Bismarck, North Dakota  
August 20, 2020

BEFORE THE HONORABLE CLARE R. HOCHHALTER  
-- UNITED STATES DISTRICT COURT MAGISTRATE JUDGE --

APPEARANCES

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FOR THE UNITED STATES

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FOR THE DEFENDANT

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1 (The above-entitled matter came before the Court, The  
2 Honorable Clare R. Hochhalter, United States District Court  
3 Magistrate Judge, presiding, commencing at 10:31 a.m.,  
4 Thursday, August 20, 2020, in the United States Courthouse,  
5 Bismarck, North Dakota. The following partial proceedings were  
6 had and made of record in open court with the defendant  
7 appearing by videoconference beginning at 10:33 a.m., the same  
8 day.)

9 - - - - -

10:33 10 MS. RUSSELL: The United States would call Randy  
11 Larkin.

12 RANDY LARKIN,  
13 having been first duly sworn, was examined and testified as  
14 follows:

10:34 15 DIRECT EXAMINATION

16 BY MS. RUSSELL:

17 Q. Could you please state your name and current occupation?

18 A. Randy Larkin, special agent, FBI.

19 Q. And how long have you been in law enforcement?

10:34 20 A. Since September of 2015.

21 Q. And what is your current assignment?

22 A. My current assignment is to the williston, North Dakota,  
23 resident agency out of the Minneapolis Division.

24 Q. And what do your duties include?

10:34 25 A. It's a two-man office. We investigate crimes of any

1 federal nexus, to include violent crimes against children,  
2 drugs, white-collar -- white-collar crime, fraud, cyber,  
3 counterterrorism, and violent crimes within the boundaries of  
4 Indian reservations.

10:34

5 Q. And what sort of training or education do you have to  
6 undertake those duties?

10:35

7 A. I have a -- hold a undergraduate degree in information  
8 computer technology. I have a Master's degree in information  
9 assurance. I have years of experience working in the private  
10 sector and my experience -- training and experience as an FBI  
11 agent. Throughout the course of my time in Williston I've  
12 conducted arrests, search warrants, controlled narcotic  
13 purchases with confidential informants, and numerous  
14 interviews.

10:35

15 THE COURT: Ms. Russell, can I interrupt you just  
16 briefly? I want to clarify something for the record because  
17 this came up, I think, during defendant's initial appearance as  
18 well. His name, Mr. Suhr, is it Christopher Wayne or  
19 Christopher Lewis?

10:35

20 MR. SUHR: Christopher Lewis, Your Honor.

21 THE COURT: So when I said Christopher Wayne earlier  
22 in calling this case, that's incorrect. It's Christopher Lewis  
23 Gillette.

24 MR. SUHR: Correct.

10:36

25 THE COURT: All right. I think we'll get it right

1 going forward. I apologize for the interruption, Ms. Russell.

2 MS. RUSSELL: Not a problem, Your Honor.

3 THE COURT: Thank you, Mr. Suhr.

4 MR. SUHR: Thank you.

10:36 5 Q. (MS. RUSSELL CONTINUING) Please continue.

6 A. I was finished.

7 Q. Okay. Sorry. And you're familiar currently with the  
8 charges against the defendant, that being second degree murder  
9 in Indian country, correct?

10:36 10 A. Yes.

11 Q. And you did complete an affidavit or at least swore to an  
12 affidavit for probable cause in this case previously, correct?

13 A. Correct.

14 Q. And can you explain to the Court how this matter initially  
10:36 15 came to the attention of law enforcement?

16 A. Yes, I can. My morning began at approximately 7 o'clock  
17 from Williston, when I started receiving phone calls and text  
18 messages in regards to what had happened.

19 Q. On what date was that?

10:36 20 A. This was on Friday, August 14th.

21 THE COURT: I'm going to interrupt again,  
22 Ms. Russell, and ask that your witness slow down a bit. Number  
23 one, I listen slowly. And number two, it'll help our court  
24 reporter today as well, all right? Thank you.

10:37 25 MS. RUSSELL: Certainly.

1 THE WITNESS: Yes, sir.

2 Q. (MS. RUSSELL CONTINUING) And that was of 2020, this year,  
3 correct?

4 A. Correct.

10:37

5 Q. And on that date, please continue. What happened?

10:37

6 A. I was informed by law enforcement that a shooting had  
7 occurred in the Twin Buttes area, within the boundaries of the  
8 Fort Berthold Indian Reservation. As I was -- once I had  
9 agreed to respond, I began driving out there and met up with  
10 our task force officers from Watford City Police Department.  
11 We call them TFOs. They're sworn law enforcement officers.  
12 They're deputized to help us.

10:37

13 AS I was driving out there, Sergeant -- Sergeant Cody  
14 Smith of the tribal police -- Three Affiliated Tribes Police  
15 Department called me and gave me the facts as they had -- the  
16 events as they had occurred that morning. Words followed.  
17 Sergeant Smith told me that there was one individual who had  
18 been shot, who was deceased. There was an addition -- and his  
19 name was James Cody Mossette.

10:38

20 He told me a second individual had been shot in the  
21 head named Wayne Morin, who had been life-flighted out to  
22 Bismarck for medical -- for emergency medical attention. He  
23 told me that the shooter was an individual named Christopher  
24 Gillette and that Christopher was in custody in the back of  
25 Sergeant Cody Smith's police vehicle.

10:38

1           At that time we were concerned with our legal  
2 authority to enter the residence, and I advised Sergeant Smith  
3 that we could receive consent from the owner of the house,  
4 which was Marlien Gillette. He -- he had also told me that  
5 Marlien Gillette and an additional woman named Lisa Lee were  
6 inside of the residence, and they were being looked after by  
7 the sheriff's deputies that had responded on scene at that  
8 time.

9           I was told by Sergeant Smith that we received consent  
10 to search the residence. When I arrived -- would you like me  
11 to continue, or do you have a question?

12 Q.   So when law enforcement initially arrived on scene, there  
13 were two males. One was deceased, correct?

14 A.   Correct.

15 Q.   And where was the deceased male shot?

16 A.   He was shot in the chest.

17 Q.   And the other male was shot in the head, but he was still  
18 alive and life-flighted out, correct?

19 A.   Yes.

20 Q.   And then there was also the defendant, Christopher  
21 Gillette, correct?

22 A.   Correct.

23 Q.   And there was two other individuals on scene, two females,  
24 correct?

25 A.   Correct.

1 Q. And who were they?

2 A. Marlien Gillette was -- is the mother of Christopher  
3 Gillette. She's the owner of the residence. Lisa Lee is the  
4 friend or girlfriend of Wayne Morin. And just for the familial  
5 relationships, to understand, James Cody Mossette, the  
6 deceased, is Christopher Gillette's cousin, and so Marlien  
7 Gillette's nephew as well.

8 Q. Okay. And so when -- you arrived at what point?

9 A. I arrived between 10:00 and 10:30.

10 Q. And did you assist in the search of the residence, or was  
11 that already searched?

12 A. No. No, they had -- they had frozen the residence and  
13 were awaiting my arrival, and they did not interview any of the  
14 witnesses either. The only piece of evidence that had been --  
15 was the firearm, the weapon. I was told by Sergeant Cody Smith  
16 that he secured the weapon in his vehicle after taking  
17 photographs of the location.

18 Q. And where was the weapon located?

19 A. The weapon was located on the table when the initial  
20 responders, which was Dunn County Sheriff's Department,  
21 arrived.

22 Q. And describe the weapon. Was there any ammunition or  
23 bullets left in the weapon, or was it empty?

24 A. No, there was not. In the photos that I reviewed of  
25 the -- from Dunn County, the weapon was -- had the slide locked



1 to the receiver, indicating it was empty, and the magazine was  
2 off the side of it.

3 Q. And then describe the search of the residence that then  
4 took place when you arrived.

10:41

5 A. Okay. We began by -- we first went in there and did an  
6 initial walk-through just to view. I introduced myself and  
7 greeted Marlien and Lisa and viewed the body, which had a sheet  
8 over it at the time.

10:41

9 We then exited the residence and proceeded to take  
10 what's called entrance photographs, which was from the street  
11 view, walking into the residence. I assisted the officers with  
12 -- the TFOs with labeling the rooms, and then secured the  
13 residence, secured the dog who was in there, in the basement.

10:41

14 After that I instructed the TFOs on the appropriate  
15 -- the necessary and appropriate paperwork and how to conduct  
16 the search, which they were familiar with, evidence and chains  
17 of custody, as they're sworn law enforcement officers, so they  
18 were familiar with all this. And I requested Sergeant Smith's  
19 assistance to begin collecting statements from the witnesses.

10:42

20 Q. And what did you find of any relevance then in the house  
21 related to this incident?

10:42

22 A. At the conclusion of the search we collected, I believe,  
23 approximately 50-something items. There was drugs, drug  
24 paraphernalia, meth residue -- or methamphetamine residue. I  
25 apologize. Sorry. There was marijuana, marijuana

1 paraphernalia. We collected bloody clothing. We collected  
2 some swabs, a hat with a bullet hole in it, which Wayne Morin  
3 was wearing at the time, and we collected the firearm.

10:42 4 THE COURT: Ms. Russell, excuse me. Agent Larkin, if  
5 you maybe move back a little bit from the microphone, make sure  
6 it's in front of you, and then we'll have less of that  
7 interference on some of the -- like the Ps and the like.

8 THE WITNESS: Yes, sir.

10:43 9 THE COURT: And speak up, of course, and speak  
10 slowly --

11 THE WITNESS: Okay.

12 THE COURT: -- if you would, even slower than you  
13 think is slow, okay?

14 THE WITNESS: Okay.

10:43 15 THE COURT: Go ahead. Sorry.

16 Q. (MS. RUSSELL CONTINUING) Were there any casings  
17 consistent with the weapon being fired?

18 A. Yes, we collected three shell casings.

19 Q. And you indicated that there were some evidence of drugs  
10:43 20 or methamphetamine. Where was that located?

21 A. Methamphetamine residue was located on the table.

22 Q. And where was that at, in what area?

23 A. On the kitchen table. The kitchen table had been moved in  
24 order to facilitate the paramedics in rescue efforts.

10:43 25 Q. And then you indicated that both Lisa Lee and the mother

1 -- her name again?

2 A. Marlien Gillette.

3 Q. -- Marlien were both interviewed. Let's talk first about  
4 Lisa Lee. What -- did she provide again what had happened  
5 during this incident?

6 A. Lisa Lee told me that that morning she had arrived at the  
7 residence with Cody Mossette, Wayne Morin and herself in a  
8 champagne-colored vehicle. They arrived somewhere between 5:30  
9 and 6:00, I believe.

10 Q. In the morning?

11 A. In the morning, yes. They -- Cody entered the residence  
12 first from the north door, which was the side door of the  
13 house. Cody then came back out and got Wayne and Lee, and they  
14 went inside and sat down at the table.

15 Christopher Gillette came out and was irate at the  
16 time that they had arrived, but he greeted everybody and sat  
17 down with them. There was methamphetamine use by some or all  
18 of the individuals at the table. There was arguments in  
19 regards to either the methamphetamine use or the arrival time.

20 Chris walked -- Christopher got up from the table,  
21 walked back to his room and retrieved a pistol, which was  
22 holstered in a concealed -- in what's called an inside-the-  
23 waistband holster and clipped it to his pants. He walked back  
24 out, and he sat down.

25 Some more arguments transpired. Christopher stood up

1 and shot three times. He -- one round hit Cody in the chest,  
2 another round missed, and the third round hit Wayne Morin in  
3 the head and then shattered the sliding glass door.

10:45 4 Q. Now, Lisa Lee, she didn't admit to using methamphetamine,  
5 correct?

6 A. Not at the time, no, she didn't.

7 Q. Okay. This was afterwards, correct, you received that  
8 information?

9 A. Yes.

10:46 10 Q. Now, Marlien, you spoke with her?

11 A. Yes.

12 Q. And what did she indicate? What did she know of this  
13 incident?

14 A. Marlien told me that the shots woke her up from her sleep.  
10:46 15 When she came out, she saw Christopher. Christopher was -- had  
16 put the gun down on the table and yelled -- was yelling, "Call  
17 911. Call 911." Christopher began CPR and lifesaving aid for  
18 Cody. And Marlien had got the 911 dispatchers on the call, and  
19 her and Christopher alternated lifesaving measures on Cody over  
10:46 20 the phone.

21 Q. And she initially thought she heard three shots, correct,  
22 according to her statement?

23 A. Correct.

24 Q. And that's what woke her up and brought her to the  
10:47 25 kitchen?

1 A. Correct.

2 Q. Now, did law enforcement indicate to you when they  
3 initially arrived on scene, any statements that the defendant  
4 made initially to them?

10:47

5 A. Yes. Sergeant Smith indicated to me that the defendant  
6 made an utterance of, "This was a bad mistake. The gun just  
7 went off."

8 Q. And you indicated that he was interviewed, though,  
9 subsequent to that, correct?

10:47

10 A. I interviewed him subsequent to that, correct.

11 Q. And tell me about the first interview that the  
12 defendant -- that you did with the defendant.

10:47

13 A. For the first interview the defendant told me that he was  
14 sleeping and that he thought somebody was -- broken into the  
15 residence. He grabbed his gun, walked out and saw some  
16 shadows, was very scared and frightened and started shooting.  
17 And once the lights came on, he realized who he had shot and  
18 began lifesaving measures.

10:48

19 Q. So the first statement he basically thought a burglar had  
20 broken into the house and essentially started shooting at what  
21 he thought were just strangers, correct?

22 A. That's correct.

23 Q. Now, you interviewed him a second time, correct?

24 A. That's correct.

10:48

25 Q. And what did he provide in his second statement?

1 A. The second statement he told me he had lied to me  
2 previously in the first interview and he -- the shooting  
3 occurred because he was upset that the individuals were in his  
4 house using methamphetamine and getting high.

10:48

5 Q. And he admitted to all four of them being at the table,  
6 correct?

7 A. Correct.

8 Q. And that he was angry at them at some point and had asked  
9 them to leave?

10:48

10 A. Yes.

11 Q. Did he talk about going and getting the gun and coming  
12 back?

13 A. Yes, he was just going to scare them with it.

14 Q. And talk about that, more detail about that second  
15 interview.

10:49

16 A. In the second interview I tried to -- or I asked  
17 Christopher if he could give me a little bit more information  
18 on -- he was saying that they came at him. He was not -- was  
19 not able to provide much detail in regards to how or who came  
20 at him aside from he was scared and the gun, it just -- he just  
21 started shooting. I asked him, "Did anyone have any guns or  
22 knives?" And he said, "No. well, actually, I don't remember."

10:49

23 Q. And is the defendant an enrolled member of the Fort  
24 Berthold Three Affiliated Tribes?

10:49

25 A. Yes.

1 Q. And did you find anything in the residence as far as any  
2 other weapons or anything of that nature?

3 A. There were -- when I was inside the residence, I noticed  
4 that there were some pocketknives. There was a pocketknife on  
5 the table, and I asked about it. They -- the officers and  
6 agents who were conducting the search just said it was there  
7 when they had gotten there, and there was no indication in any  
8 of the testimony that there were any -- that any of the  
9 individuals in there had any weapons.

10 Q. Well, you talked about a pocketknife. Describe what we're  
11 talking about, size and -- describe it.

12 A. It was a -- just a steel folding knife, maybe this --  
13 about this big (indicating).

14 Q. So very small?

15 THE COURT: Can you indicate in terms of inches what  
16 you were -- I missed it.

17 THE WITNESS: I believe maybe five to six inches  
18 folded.

19 Q. (MS. RUSSELL CONTINUING) And it was folded when you seen  
20 it --

21 A. Yes.

22 Q. -- on the table? Now, you initially again indicated you  
23 had seen methamphetamine residue on the table, correct?

24 A. I was told by the officers conducting the search that they  
25 had found methamphetamine, and I began questioning everybody,

1 Marlien, Lisa and Christopher, in regards to the  
2 methamphetamine.

3 Q. But you didn't find actual methamphetamine, correct?

4 A. That's correct.

10:51

5 Q. Were you able to find out more about that later on?

6 A. Yes, I was. I was notified that Marlien Gillette had  
7 requested us to return to the residence because she had more to  
8 tell us. Marlien told me that she had lied to me about the  
9 drug use when I asked her, and she said that prior to the --  
10 any first responders arriving, Chris was yelling, "Get that  
11 shit out of here." And Marlien leaned over, and Lisa placed a  
12 bong and meth into the container, and Marlien took it  
13 downstairs and put it in a box. She showed officer -- she  
14 showed us when we came there the second time to the residence  
15 of where she had placed it.

10:52

16 Additionally, there was another box of marijuana,  
17 which -- which she indicated that she had placed under the  
18 sink, and officers and agents had located that during the  
19 search and seized it.

10:52

20 Q. And the current status at this point in time of Morin, is  
21 he still alive at this time? What is his condition?

22 A. The last status I received was that Morin was intubated,  
23 and, well, from what I understand, is on life support. He's  
24 not responsive, but I was told by the nurse that his heart and  
25 lungs are strong and he could go another month like that.

10:52



1 MS. RUSSELL: That's all the questions I have at this  
2 time, Your Honor, unless, Your Honor, if you'd like me to go  
3 into the detention portion of this at the same time or if you  
4 want me to wait on that.

10:53

5 THE COURT: Well, I think, Mr. Suhr, our plan was to  
6 combine the two, am I right? And so going into testimony  
7 related to detention is reasonable under the circumstances.  
8 Would you agree, Mr. Suhr?

10:53

9 MR. SUHR: I guess I was planning on addressing the  
10 preliminary hearing portion first and then presenting the  
11 defendant's mother on the question of detention, Your Honor. I  
12 don't have any questions --

10:53

13 THE COURT: What we end up doing is probably  
14 recalling the witness later then, so what I'm asking is, can we  
15 go ahead with counsel's questions related to detention?

16 MR. SUHR: Oh, I'm sorry, Your Honor. I  
17 misunderstood.

10:53

18 THE COURT: Just a matter of efficiency. I  
19 understand what counsel is suggesting, and I appreciate that as  
20 well, but go ahead, Ms. Russell.

21 MS. RUSSELL: I just have a few more questions then,  
22 Your Honor.

23 Q. (MS. RUSSELL CONTINUING) Are you familiar with the  
24 defendant's history?

10:54

25 A. Yes.

1 Q. And you also spoke with him a little bit about some of his  
2 history, correct?

3 A. Extensively. That first interview was about 90 minutes,  
4 Chris first spoke to us.

10:54

5 Q. And you talked a bit about guns and some of his gun use,  
6 correct, and some of his past instances related to gun use?

7 A. Yes, I did.

10:54

8 Q. And can you describe to the Court some things that you  
9 talked to him about as far as his usage of guns and violent  
10 episodes in the past?

10:54

11 A. Yes. The -- there was numerous instances of Christopher  
12 mishandling weapons and firearms. The first that I can  
13 remember was there was additional bullet holes in the kitchen  
14 floor. There was about eight of them. We questioned Marlien  
15 Gillette and Christopher Gillette about those holes, and we  
16 were told that there was an incident where Christopher got  
17 drunk and started shooting into the floor. That was the first  
18 one.

10:55

19 When Christopher was asked by Sergeant Smith in the  
20 interview if he had ever discharged a firearm out of anger,  
21 Christopher explained that he was upset that his girlfriend had  
22 been killed in a car accident and -- while carrying his child.  
23 He walked outside and shot in anger, a shotgun, into the air.

10:55

24 There was a third incident where there were -- it was  
25 -- Christopher was handling a rifle inside the residence, in

1 his room, and additionally -- and shot the floor once again.

2 And the last instance I can recall is of Christopher  
3 explaining that there was a time where someone was -- his  
4 neighbors and friends were outside of the residence. They were  
10:55 5 throwing rocks. They ended up throwing rocks and breaking out  
6 his taillight in his car. Christopher chased them and was  
7 unable to catch them, so he called the police.

8 And then Christopher then told me that he waited --  
9 or we learned that Christopher waited some time and then went  
10:56 10 back down and shot out the taillights in retaliation. When I  
11 questioned Christopher as to why he had left that part out when  
12 we asked him, he was remorseful and apologized and said he had  
13 forgotten.

14 Q. And did you also talk to his girlfriend about some prior  
10:56 15 episodes of potential violence as well?

16 A. Just briefly, yes.

17 Q. And what did you learn from that?

18 A. I learned that there was an incident in July of 2020, and  
19 I don't necessarily remember the details, but the police were  
10:56 20 called. Christopher had been drinking.

21 THE COURT: Hang on. Mr. Gillette, can you still  
22 hear us?

23 THE DEFENDANT: Yes, I can. I can see you too.

24 THE COURT: Okay. Well, we lost our video of you,  
10:57 25 but if you can hear us, we can continue with the hearing. All

1 right, Mr. Suhr?

2 MR. SUHR: That's fine, Your Honor.

3 THE COURT: All right. Go ahead, Ms. Russell.

4 Q. (MS. RUSSELL CONTINUING) You were explaining about a  
5 July 2020 incident?

6 A. Yes, the July 2020 incident was just briefed to me very  
7 briefly when I spoke with his girlfriend, and there was --  
8 again, there was a -- it was a domestic incident with some  
9 violence and some alcohol consumption where she had feared for  
10 her life.

11 Q. And it involved the defendant as well?

12 A. Yes, that was -- yes.

13 MS. RUSSELL: That's all the questions I have at this  
14 time, Your Honor.

15 THE COURT: All right. Mr. Suhr.

16 MR. SUHR: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. SUHR:

19 Q. Agent Larkin, what time on August 14th did you arrive at  
20 the residence?

21 A. I believe it was about 10:20.

22 Q. A.m.?

23 A. Correct, a.m.

24 Q. In relation to the time of the underlying incident, how  
25 long afterwards then would that have been?

1 A. That would have been approximately four hours.

2 Q. Are you aware -- other than what was provided to you by  
3 Officer Smith, are you aware personally of any of the specific  
4 investigative steps that took place between the initial point  
5 law enforcement arrived and your arrival?

10:59

6 A. Yes, I am.

7 Q. Other than what other law enforcement told you, though.  
8 You're -- you're dependent entirely on what other officers told  
9 you occurred before your arrival, isn't that correct?

10:59

10 A. That's correct.

11 Q. So your only personal knowledge of what occurred from an  
12 investigative standpoint is from what happened once you  
13 arrived, isn't that correct?

14 A. And collecting witness testimony, correct.

10:59

15 Q. After your arrival.

16 A. Yes.

17 Q. You've stated that when law enforcement first arrived on  
18 the scene, there were three individuals present, Cody Mossette,  
19 Wayne Morin, and Lisa Lee, correct?

10:59

20 A. Correct.

21 Q. And then also Marlien Gillette was there, so I guess four.

22 A. Correct.

23 Q. You testified that consent to enter the residence was  
24 obtained. Perhaps I missed it, but from whom was consent to  
25 enter the residence obtained?

11:00

1 A. Marlien Gillette signed a consent form with Sergeant Cody  
2 Smith.

3 Q. And did he show that to you, or did he just tell you?

4 A. He showed that to me.

11:00

5 Q. Okay. And based on that consent, entry was made.

6 A. That's correct.

7 Q. You stated that the weapon was located on the kitchen  
8 table.

9 A. Yes.

11:00

10 Q. And that it was not loaded at the time?

11 A. Yes.

12 Q. And that the magazine had been set off to the side.

13 A. Yes.

11:00

14 Q. To your knowledge, did anyone in law enforcement unload  
15 the weapon, clear the chamber, or remove the magazine?

16 A. No.

17 Q. Do you know who, if anyone, cleared the chamber, unloaded  
18 the weapon, or removed the magazine?

19 A. No.

11:01

20 Q. You described a walk-through of the residence. Did you do  
21 that personally?

22 A. Yes.

23 Q. Had there been a walk-through prior to your arrival?

11:01

24 A. No, except for whatever law enforcement had to do to  
25 respond to the lifesaving measures.

1 Q. who took the photos?

2 A. Task Force Officer Dylan Bostic.

3 Q. Were those photos taken prior to your arrival or  
4 subsequent to your arrival?

11:01

5 A. Subsequent to my arrival.

6 Q. Were there any photos taken prior to your arrival?

7 A. Yes.

8 Q. who took those?

11:01

9 A. Some officers of Dunn County - I don't recall specifically  
10 - as well as officers of the -- or I believe as well as  
11 Sergeant Cody Smith of Three Affiliated Tribes.

12 Q. would you be considered lead on this case for purposes of  
13 the multiagency response?

14 A. Yes.

11:02

15 Q. So all evidence and photographs taken would ultimately go  
16 to you?

17 A. Yes.

18 Q. Approximately how many photos have been taken, sir?

19 A. Approximately 500.

11:02

20 Q. And you've testified there were around 50 items collected.

21 A. Correct.

22 Q. Did you personally collect any of those items, Agent?

23 A. I did not.

24 Q. Other officers involved in the investigation did?

11:02

25 A. Yes.

1 Q. Were those items collected before your arrival or after?

2 A. After my arrival. The only item collected prior was the  
3 firearm.

4 Q. You testified that on the kitchen table there was meth  
5 residue.

6 A. Yes.

7 Q. How was that determined to be meth residue, sir?

8 A. It was field-tested onsite.

9 Q. Who tested it?

10 A. One of the task force officers.

11 Q. You testified there was marijuana as well?

12 A. Yes.

13 Q. How did that get determined to be marijuana?

14 A. Familiarity of smells, experience, training.

15 Q. You described there was paraphernalia present. Was that  
16 paraphernalia for use with a specific substance?

17 A. I don't know specifically.

18 Q. Was there a smoking device for methamphetamine found?

19 A. Yes, after -- well, there was a smoking device found in  
20 the vehicle which the -- they had arrived in. And then there  
21 was a smoking device which was collected after we visited the  
22 residence the second time and given to us by Marlien.

23 Q. Okay. So at the time of the incident, the vehicle in  
24 which Mr. Mossette, Mr. Morin and Ms. Lee arrived was searched,  
25 correct?



1 A. Not -- no, it was the -- there was a pipe in plain view at  
2 that time. We did not search the vehicle until the house was  
3 complete.

4 Q. Okay. Thank you. But the paraphernalia -- the meth  
5 paraphernalia was found in the vehicle that Mr. Morin,  
6 Mr. Mossette and Ms. Lee arrived in.

7 A. I'm not positive if that was meth paraphernalia  
8 specifically, but I believe it could be used for -- I believe  
9 it's a smoking device, yes.

10 Q. Has it been submitted to the North Dakota State Crime Lab  
11 for analysis?

12 A. Not yet, sir.

13 Q. Okay. Is it in evidence?

14 A. Yes.

15 Q. Who's the evidence custodian for purposes of this  
16 investigation?

17 A. The evidence is secured at the -- well, the drug evidence  
18 was dropped off. We sealed it and dropped it at Watford City  
19 Police Department, and the rest of the evidence was brought  
20 by -- brought to my office, the Williston R.A.

21 Q. So some of it's in Williston, and some of it's in your  
22 office.

23 A. Some -- yeah, some of it is in Watford City, and some of  
24 it is in my office, yes. We have a policy requiring two agents  
25 to transport drugs and drug paraphernalia.

1 Q. And then you said that there was a -- there was drug  
2 paraphernalia later that was turned over by Christopher  
3 Gillette's mother, Marlien.

4 A. Yes.

11:05

5 Q. With respect to the methamphetamine residue on the kitchen  
6 table, was that swabbed or collected in any way?

7 A. That was collected, yes.

8 Q. When you interviewed Ms. Lee, she acknowledged getting to  
9 the residence, 5:30 to 6 o'clock a.m.

11:05

10 A. Yes.

11 Q. Was she asked why they came at such a strange hour?

12 A. Yes.

13 Q. Why is that?

14 A. They -- she explained to me that they were going to stay  
15 either the night or the day there.

11:05

16 Q. Okay. But did she explain where they had been prior to  
17 this?

18 A. Yes.

19 Q. Where were they?

11:05

20 A. They were in the Mandan-Bismarck area.

21 Q. Did she say what they were doing?

22 A. They were at a friend's trailer. They made a stop for gas  
23 and food, and they made a stop for her to pick up clothing from  
24 a friend.

11:06

25 Q. Had she stated what they were doing at this friend's

1 trailer?

2 A. No.

3 Q. Was she asked what they were doing at the friend's  
4 trailer?

11:06 5 A. Yes.

6 Q. And why didn't she answer that question?

7 A. She didn't -- she just said they were hanging out.

8 Q. She testified or she -- excuse me. You testified that she  
9 told you that Cody Mossette first entered the Gillette  
10 residence, then came back out and got Mr. Morin and Ms. Lee to  
11 come in, correct?

12 A. Correct.

13 Q. And then is that when the three of them sat down at the  
14 kitchen table?

11:06 15 A. Yes.

16 Q. And what were they doing at the kitchen table?

17 A. Just sitting there.

18 Q. So they just came and sat there.

19 A. That's what I was told, yes.

11:06 20 Q. How'd the meth residue get on the kitchen table?

21 A. I asked that and was not provided a sufficient answer.

22 Q. So Ms. Lee provided you some information, but wouldn't  
23 provide you other information.

24 A. That's correct, yeah.

11:07 25 Q. Did you ask Ms. Lee specifically if she had been using

1 methamphetamine prior to this incident?

2 A. Yes.

3 Q. And what did she tell you?

4 A. No.

11:07

5 Q. She denied it.

6 A. Yes.

7 Q. Were any steps taken to corroborate her denial?

8 A. No.

9 Q. Was she asked if she would submit to a urine screen?

11:07

10 A. No.

11 Q. Why wasn't she asked if she would submit to a urine  
12 screen?

13 A. At that time -- at the time that we -- it was confirmed  
14 that they were smoking methamphetamine. After Christopher had  
15 told me, Lisa had already left the residence.

11:07

16 Q. You have familiarity with controlled substances, Agent?

17 A. Yes, I do.

18 Q. Would you agree that controlled substances can affect the  
19 accuracy of information provided by a person who has used  
20 controlled substances?

11:08

21 A. Yes.

22 Q. Were you interested in the accuracy of Ms. Lee's  
23 statement?

24 A. Yes.

11:08

25 Q. And you took no steps to confirm whether or not she had

1 used any controlled substances.

2 A. We did not, no.

3 Q. Did you ask Ms. Lee if Mr. Mossette had used controlled  
4 substances?

11:08

5 A. Yes.

6 Q. And what did she say?

7 A. She didn't know.

8 Q. She had been with him the whole night prior?

11:08

9 A. She stated on the way over that they -- no one was smoking  
10 or getting high.

11 Q. Was Mr. Mossette at the friend's trailer she described  
12 being at earlier?

13 A. Yes.

14 Q. And she was with him then at the trailer.

11:08

15 A. She was, yes.

16 Q. And she didn't know if he had used any controlled  
17 substances at the trailer.

18 A. Correct.

11:08

19 Q. What was her demeanor when you asked her about meth use  
20 for herself or Mr. Mossette?

21 A. She was cooperative, but appeared to be being untruthful  
22 at the time.

23 Q. Did you ask Ms. Lee about whether or not Mr. Morin had  
24 used any controlled substances?

11:09

25 A. Yes.

1 Q. what did she say?

2 A. The same, she didn't know, and she didn't know what they  
3 were doing prior to meeting up with her.

4 Q. And she had been with Mr. Morin previously at the friend's  
5 trailer as well?

6 A. Yes.

7 Q. Did she say how long they had been together prior to this  
8 incident?

9 A. I don't remember, no. Possibly the afternoon or early  
10 evening.

11 Q. With respect to Mr. Mossette and to Mr. Morin, to your  
12 knowledge, have toxicology samples been taken from either of  
13 them in the course of their subsequent medical treatment?

14 A. I believe Mr. Mossette, yes. If a forensic examination  
15 was done on the body, I'm not positive.

16 Q. Have you received any preliminary results yet?

17 A. I was told they were picked up by an agent in Bismarck. I  
18 have not reviewed them or -- no.

19 Q. So as of right now you're uncertain about whether there's  
20 any toxicology-based evidence one way or the other on whether  
21 Mr. Mossette had used methamphetamine or any other controlled  
22 substance.

23 A. Correct.

24 Q. As I understand it, Mr. Morin remains in the hospital?

25 A. Yes.

1 Q. As a part of his medical care, have you secured any -- any  
2 hospital records?

3 A. Not yet, no.

4 Q. Or I should say as a part of your investigation, are you  
5 planning to get those records?

6 A. Yes. Yes.

7 Q. To your knowledge, will there be toxicology records?

8 A. To my knowledge, yes, but I'm not positive.

9 Q. Did Ms. Lee say that Mr. Gillette had used  
10 methamphetamine?

11 A. No.

12 Q. Did you ask her if Mr. Gillette had used methamphetamine?

13 A. Yes.

14 Q. And what -- what specially did she say when you asked her  
15 that?

16 A. She didn't know.

17 Q. She didn't describe seeing him use in the kitchen?

18 A. No.

19 Q. Okay. And she hadn't been with him at all prior to the  
20 incident, correct?

21 A. Correct.

22 Q. You said that Mr. Mossette was cousins with Mr. Gillette,  
23 is that correct?

24 A. That's correct.

25 Q. Did you have any evidence of animosity between

1 Mr. Mossette and Mr. Gillette?

2 A. No.

3 Q. You testified that Marlien Gillette was -- told you she  
4 was woke up by the gunshots.

11:11 5 A. Yes.

6 Q. And she confirmed hearing multiple shots.

7 A. Yes.

8 Q. Three, I believe, is what you stated, correct?

9 A. Correct.

11:11 10 Q. And when she came out to the kitchen area, Mr. Gillette  
11 was actually begging to call 911, correct?

12 A. Yes.

13 Q. And he was actually doing CPR on Mr. Mossette, isn't that  
14 correct?

11:11 15 A. That's correct.

16 Q. So he was attempting to save his life.

17 A. That's correct.

18 Q. And then it was Ms. Gillette -- it was Marlien Gillette  
19 that called 911?

11:12 20 A. Yes.

21 Q. And then she also assisted in providing CPR as best she  
22 could?

23 A. Yes.

24 Q. Cody Smith told you that -- Officer Smith, I should say --  
11:12 25 excuse me -- told you that he had spoken to Mr. Gillette, who



1 told him that this was a bad mistake and the gun just went off.

2 A. Yes.

3 Q. You had that information before your first interview with  
4 Mr. Gillette, didn't you?

11:12

5 A. Yes.

6 Q. Okay. Did Officer Smith elaborate further on  
7 Mr. Gillette's statement that this was a bad mistake?

8 A. No.

11:12

9 Q. Did Officer Smith elaborate further on Mr. Gillette's  
10 statement that the gun just went off?

11 A. No.

12 Q. Did you ask for any detail on that?

13 A. Yes.

14 Q. And what did Officer Smith tell you, sir?

11:12

15 A. Oh, I asked for -- we asked Christopher for detail about  
16 it.

17 Q. Okay. So you got that information --

18 A. Yes.

19 Q. -- from Mr. Gillette.

11:12

20 A. Yes.

21 Q. Thank you. When you then interviewed Mr. Gillette -- you  
22 didn't arrive at the residence until about four hours after the  
23 incident, so what time did you interview Mr. Gillette?

11:13

24 A. It was -- it was after Lisa and after Marlien, so it was  
25 about 1:30 or 1:50.

1 Q. where did you interview him, sir?

2 A. In the laundry room.

3 Q. of the residence?

4 A. Yes.

11:13

5 Q. Describe his demeanor when you interviewed him, please.

6 A. He was remorseful. He was cooperative.

7 Q. When you interviewed him, did you recite his Miranda  
8 rights?

9 A. Yes.

11:13

10 Q. Did you interview him with a recording device?

11 A. Yes.

12 Q. Did you use that recording device?

13 A. Yes.

14 Q. So is there a digital or a video recording of the  
15 interview?

11:13

16 A. Yes.

17 Q. He described to you this initial version of events that  
18 involved a burglary of unknown individuals, correct?

19 A. Yes.

11:13

20 Q. Did you confront him with the information Officer Smith  
21 had previously provided you?

22 A. In regards to the accident?

23 Q. Yes, sir.

24 A. Yes.

11:14

25 Q. During that first interview?

1 A. Yes.

2 Q. What did he say?

3 A. He didn't know. It just went off, and he was scared.

4 Q. Did you at the time know of Mr. Gillette's educational  
5 level?

6 A. No.

7 Q. Were you aware at the time he only had a eighth grade  
8 education?

9 A. No.

10 Q. Did he seem to have trouble understanding your questions?

11 A. No.

12 Q. Did you -- are you familiar, sir, with physical indicators  
13 if somebody has used controlled substances?

14 A. Yes.

15 Q. Would that include usage of marijuana?

16 A. Yes.

17 Q. Would that include usage of methamphetamine?

18 A. Yes.

19 Q. What kinds of signs would you be looking for if someone  
20 had used marijuana?

21 A. If someone had used marijuana?

22 Q. Yes, sir.

23 A. I would be looking for them to be a little bit more low  
24 key, maybe some eye -- some red, bloodshot eyes and just more  
25 relaxed than they would normally be not using that substance.

1 Q. Did you see any indicators that Mr. Gillette had used  
2 marijuana?

3 A. I didn't see any in his eyes, but Mr. Gillette was relaxed  
4 and he was comfortable with us.

11:15

5 Q. What would you be looking for with respect to signs an  
6 individual has used methamphetamine?

7 A. Just about the same general sort of -- maybe sporadic --  
8 maybe they're -- they tell you one thing and then immediately  
9 recant what they've previously told you.

11:15

10 Q. I'm talking physical manifestations.

11 A. Physical manifestations, I'm not -- I don't know.

12 Q. You testified you have familiarity with physical signs if  
13 an individual has used methamphetamine. Are you saying that  
14 you do or you don't?

11:15

15 A. I do.

16 Q. Okay. So did you see any signs of methamphetamine --  
17 physical manifestations of methamphetamine use in Mr. Gillette?

18 A. No.

19 Q. Did you see physical signs of methamphetamine use in Ms.  
20 Lee?

11:16

21 A. No.

22 Q. Did you look for them?

23 A. Yes.

24 Q. And what did you look for?

11:16

25 A. I looked to see if she was -- again, the same. I looked

1 to see if she would recant and change and tweak her answers a  
2 little bit, and I was -- I didn't find any, no.

3 Q. Okay. What time did you say your initial interview with  
4 Mr. Gillette was, sir?

11:16

5 A. I believe it was approximately 1:45.

6 Q. P.m.?

7 A. Yes.

8 Q. And you did a subsequent interview with Mr. Gillette.

9 A. Yes.

11:16

10 Q. What time was that interview?

11 A. 5:45.

12 Q. Where was that interview?

13 A. In the rear of Sergeant Smith's police car.

14 Q. Was Mr. Gillette handcuffed?

11:16

15 A. Yes.

16 Q. Were his Miranda rights read to him again?

17 A. Yes.

18 Q. Who read them?

19 A. Both myself and Cody Smith --

20 Q. And --

21 A. -- Officer Cody Smith, sir.

22 Q. At that time, isn't it a fact that Mr. Gillette actually  
23 came forward and acknowledged his previous statement about the  
24 burglary incident wasn't true?

11:17

25 A. Yes.

1 Q. You never actually had to confront him specifically about  
2 it. He owned up to it.

3 A. I confronted him specifically about it. I -- I told him  
4 that I knew that he lied to me, and I would give him one more  
5 chance to tell me what happened.

6 Q. And then he told you that the shooting had occurred  
7 because he was upset.

8 A. Yes.

9 Q. Okay. He told you that he was just going to scare them  
10 with the gun.

11 A. Yes.

12 Q. And he told you that they came at him.

13 A. Yes.

14 Q. Did he say who it was that came at him?

15 A. No.

16 Q. Did he describe an incident of wrestling over the gun?

17 A. No.

18 Q. The injuries to Mr. Mossette, you said, were in the chest  
19 area?

20 A. Yes.

21 Q. Has gunshot residue analysis been done with respect to  
22 Mr. Mossette?

23 A. No.

24 Q. Is it going to be done?

25 A. Yes.

1 Q. who is going to do that?

2 A. I'll take appropriate steps. I'm not positive right now.

3 Q. So as of right now you don't have any information about  
4 the distance Mr. Mossette was away at the time of the shot.

11:18

5 A. No.

6 Q. At this time you don't have any information about the  
7 angle of the shot.

8 A. I was told that the bullet hole found in the wall  
9 indicated that the angle of the shot was downward. I was told  
10 that by Task Force Officer Dylan Bostic.

11:18

11 Q. Was Mr. Mossette standing or sitting at the time of the  
12 shooting?

13 A. Unknown. Possibly getting up or sitting.

14 Q. If he had been getting up, then that would be consistent  
15 with Mister -- with Mr. Gillette's statement that someone came  
16 at him.

11:18

17 A. Yes.

18 Q. With respect to Mr. Morin, do you have any evidence or any  
19 information about whether gunshot residue analysis will be  
20 done?

11:18

21 A. It will be done.

22 Q. And do you have any information about the angle of the  
23 shot with respect to Mr. Morin?

24 A. I was told -- I was told that it was -- entered under his  
25 left ear and exited, I guess, upwards on the top of his head.

11:19

1 Q. Do you have any information that he was seated or standing  
2 at the time of the shot?

3 A. I don't know.

4 Q. The pistol that was recovered was what caliber?

11:19

5 A. Nine-millimeter.

6 Q. And a semiautomatic?

7 A. Yes.

8 Q. What does that mean?

11:19

9 A. Well, what that means is that you have to pull the -- you  
10 have to squeeze -- press the trigger every time to fire a shot.

11 Q. Do you know what the trigger pull on the gun was?

12 A. No.

13 Q. Has it been analyzed for that?

14 A. It will be, yes.

11:19

15 Q. When you returned to the residence to talk to Marlien,  
16 wasn't that in response to being contacted and advised that law  
17 enforcement had left behind drug paraphernalia?

18 A. Yes.

19 Q. And that she came forward with everything that had been  
20 seized?

11:19

21 A. Yes.

22 Q. And provided it willingly?

23 A. Yes.

24 MR. SUHR: Nothing further, Your Honor. Thank you.

11:20

25 THE COURT: Ms. Russell?



1 MS. RUSSELL: I have no additional questions, Your  
2 Honor.

3 THE COURT: I have a couple of questions for you.

4 EXAMINATION

11:20 5 BY THE COURT:

6 Q. Agent Larkin, where is -- this was Twin Buttes?

7 A. Yes.

8 Q. Where is that located, approximately?

9 A. 980 Highway 8 North, I believe, is the address.

11:20 10 Q. Is it near any large cities? Is it a small town?

11 A. It's a very small town, yes, sir.

12 Q. About how small?

13 A. I think the closest is Halliday, I believe. I was  
14 unfamiliar with the location.

11:20 15 Q. All right. Close to Halliday?

16 A. Yes.

17 Q. How far from Williston or Bismarck?

18 A. It is -- it was about two-and-a-half to three hours.

19 Q. Okay. Do you know about how many people live in Twin  
20 Buttes?

11:20 21 A. No, I don't.

22 Q. Is it more than 5,000?

23 A. I don't know.

24 THE COURT: Okay. Any other questions, Ms. Russell?

11:21 25 MS. RUSSELL: No, Your Honor.

1 THE COURT: Mr. Suhr?

2 MR. SUHR: No, Your Honor.

3 THE COURT: You're excused. Thanks. Any other  
4 witnesses?

11:21

5 MS. RUSSELL: I have no additional witnesses, Your  
6 Honor.

7 (The partial transcript is concluded at 11:21 a.m.,  
8 the same day.)

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CERTIFICATE OF COURT REPORTER

I, Sandra E. Ehrmantraut, a Certified Realtime Reporter,

DO HEREBY CERTIFY that I recorded in shorthand the foregoing proceedings had and made of record at the time and place hereinbefore indicated.

I DO HEREBY FURTHER CERTIFY that the foregoing typewritten pages contain an accurate transcript of my shorthand notes then and there taken.

Dated: July 28, 2021

/s/ Sandra E. Ehrmantraut  
Certified Realtime Reporter